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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF NEVADA

14 American Civil Liberties Union of )  
15 Nevada (on behalf of itself and its members), )  
16 Gary Peck, Unitarian )  
17 Universalist Social Justice Committee, )  
18 Sin City Chamber of Commerce (on behalf )  
19 of itself and its members), Richard DeVoe, )  
20 The Shundahai Network, )

21 Plaintiffs, )

22 vs. )

CV-S-97-01419-LDG (LRL)

23 The City of Las Vegas, Oscar Goodman, )  
24 in his official capacity as the Mayor, The )  
25 Fremont Street Limited Liability Corp., )  
26 and Joseph Schillaci, in his official )  
27 capacity as the President of The Fremont )  
28 Street Limited Liability Corp. )

Defendants. )

SECOND AMENDED COMPLAINT

I. INTRODUCTION

1. In an attempt to restore its declining downtown hotel casino industry to its storied past, the City of Las Vegas followed the lead of towns across the United States and turned five blocks of its main downtown street into a publicly-owned pedestrian mall, the Fremont Street Mall. The City of Las Vegas contracted with a private entity, the Fremont Street Experience Limited Liability Corporation ("FSELLC"), to transform the old Fremont Street into the modern Fremont Street Experience.

2. Fearful of the potential for disruption of merchants and customers attributable to

1 commercial hand billing and panhandling, the City placed significant restrictions upon all First  
2 Amendment activities on Fremont Street. After running afoul of the restriction upon First  
3 Amendment activities, the American Civil Liberties Union of Nevada ("ACLU") and others brought  
4 this lawsuit in 1997 in an attempt to restore their First Amendment rights.

5 3. Plaintiffs challenged those provisions of the Las Vegas Municipal Code which  
6 directly restrict First Amendment activity. The restrictions are contained in the enabling legislation  
7 creating Fremont Street, and in separate code provisions that apply to other municipal venues  
8 including pedestrian malls. Fremont Street was created by LVMC 11.68. After Sections of LVMC  
9 11.68 were successfully challenged in this Court, the Las Vegas Code sections now governing  
10 activities on Fremont Street are now found at LVMC 11.68A.

11 4. Different subsections of the legislation specifically prohibit certain First Amendment  
12 activities including, unauthorized mall vending and advertising [§ 11.68A.100(B)]; unauthorized  
13 placement of tables or displays for purposes of solicitation [§ 11.68A.100(H)]; the presence of  
14 "sexually-oriented businesses" [§ 11.68A.100(G)]; and all solicitation as defined in LVMC  
15 10.44A.010 [§ 11.68A.100(K)]. Plaintiffs challenge these code provisions both facially and as  
16 applied. Plaintiffs seek an injunction prohibiting the defendants from enforcing these code  
17 provisions or from otherwise interfering with their right to assembly and speech on Fremont Street.

18 5. Plaintiffs are individuals and advocacy organizations who wish to assemble and  
19 engage in First Amendment activity on Fremont Street for purposes of promoting the political and  
20 social causes they are associated with. Since the inception of this litigation more than nine years ago,  
21 their efforts have been thwarted by the Defendants at every opportunity. Even the relief obtained  
22 thus far has been met with opposition and the replacement of LVMC 11.68 with LVMC 11.68A,  
23 which Plaintiffs believe still incorporates most of the unconstitutional restrictions struck down by  
24 this Court. Restricting access to the Mall for expressive activity violates Plaintiffs' rights to free  
25 speech and equal protection under the First and Fourteenth Amendments of the United States  
26 Constitution. Plaintiffs seek a declaration that the restrictions are unconstitutional and an injunction  
27 enjoining their continued enforcement.

28 **II. JURISDICTION AND VENUE**

1           6.       Plaintiffs bring this action under 42 U.S.C. § 1983 and also seek relief under 28  
2 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1988.

3           7.       This court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3), and  
4 1343(a)(4).

5           8.       Venue is properly within this district under 28 U.S.C. § 1391(b) because all  
6 Defendants reside in this district.

### 7 **III. PROCEDURAL HISTORY**

8           9.       Plaintiffs filed their initial Complaint on October 9, 1997.

9           10.      On April 24, 1998, the District Court granted summary judgment to the Defendants  
10 on their claim that the Fremont Street Experience is not a public forum. *American Civil Liberties*  
11 *Union v. City of Las Vegas v. City of Las Vegas*, 13 F.Supp.2d 1064 (D.Nev. 1998).

12          11.      On April 4, 2001, the District Court ruled that the anti-leafleting ordinance LVMC  
13 § 11.68.100(I) was unconstitutional, even within a non-public forum, as was the anti- vending  
14 ordinance items, LVMC § 11.68.100(B), at least as regard to the sale of message-bearing  
15 merchandise. The Court enjoined the enforcement of both ordinances, but denied Plaintiffs' Motion  
16 for Summary Judgment in all other respects.

17          12.      On July 2, 2003, the Court of Appeals reversed the District Court's ruling that the  
18 Fremont Street Experience is not a public forum, and affirmed the District Court's ruling declaring  
19 unconstitutional and enjoining the anti-leafleting ordinance, LVMC § 11.68.100(I), and vending  
20 ordinance with respect to the sale of message-bearing items, LVMC § 11.68.100(B). The Court  
21 reversed and remanded the case back to the District Court to reconsider, under the public forum  
22 standard, the constitutionality of the "general injunction and solicitation and tabling ordinances,  
23 LVMC §§ 10.44 and 11.68.100(H), and remand[ed] to allow the District Court to consider the  
24 constitutionality of these restrictions in light of the Fremont Street Experience's public forum status."  
25 *American Civil Liberties Union v. City of Las Vegas*, 333 F.3d 1093, 1109 (9th Cir. 2003).  
26 Defendants' Petition for an en banc review was denied on August 12, 2003. Defendants filed their  
27 Petition for Certiorari on November 13, 2003. This Petition was denied on January 12, 2004. *City*  
28 *of Las Vegas v. American Civil Liberties Union*. 124 S. Ct. 1077 (2004).

1           13.     On remand, the District Court granted summary judgment to the Defendants,  
2     *ACLU v. City of Las Vegas*, No. 97-1419, at 6-7 (D.Nev. Mar.4, 2005) (unpublished order), and  
3     Plaintiffs again appealed to the Ninth Circuit. On October 20, 2006, the Ninth Circuit Court of  
4     Appeals reversed the District Court, and held that the existing Solicitation ordinance, LVMC  
5     10.44, was content-based, and that the erection of tables in a public forum, in order to facilitate  
6     free speech, is expressive activity protected by the First Amendment. The Court of Appeals then  
7     remanded the case to this Court. *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784 (9<sup>th</sup> Cir.  
8     2006).

9           14.     This Court, on March 30, 2007, granted leave to Plaintiffs to file this Second  
10     Amended Complaint, in order to allow Plaintiffs to assert constitutional challenges to the City of  
11     Las Vegas's new ordinances governing Fremont Street Experience (LVMC 11.68A) and city-  
12     wide solicitation (LVMC 10.44A).

## 14     **PARTIES**

### 15     **A.     Plaintiffs**

16           15.     Plaintiff Gary Peck is a resident of Las Vegas and Executive Director of the  
17     American Civil Liberties Union of Nevada. He seeks access to Fremont Street in order to  
18     distribute the organization's literature, collect signatures, circulate petitions, and solicit  
19     memberships and contributions for the ACLU. Mr. Peck also seeks access to Fremont Street in  
20     order to set up a table and display to facilitate the organization's First Amendment activities,  
21     including distribution of literature, the solicitation of new members for the organization, and the  
22     sale of publications and other products (such as t-shirts) that promote the ACLU or other  
23     organizations. Mr. Peck additionally seeks access to Fremont Street in order to participate in  
24     assemblies and protests organized by the ACLU or in concert with other organizations.

25           16.     Plaintiff the American Civil Liberties Union of Nevada is a non-profit advocacy  
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1 membership organization dedicated to the preservation of individual liberties and rights. The  
2 effectiveness of the ACLU depends on its ability to persuade people to its point of view through  
3 its public education and legal advocacy programs. A critical and strategic component of the  
4 organization's efforts is its work with and support of other community-based organizations.  
5 Acting alone, and in its capacity as a member organization in a broader coalition, the ACLU and  
6 its members often participate in the traditional First Amendment activities described in the  
7 proceeding paragraph. The ACLU seeks access to Fremont Street in order to engage in the First  
8 Amendment activities described in the proceeding paragraph.  
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11 17. Plaintiff Richard DeVoe is a Las Vegas resident and social activist. As a member  
12 and volunteer for the John Edwards' presidential campaign and the environmental action  
13 campaign "One Corps," Mr. DeVoe has erected a table for expressive purposes on Fremont  
14 Street, when security guards threatened his removal under LVMC 11.68A. He seeks to  
15 participate in First Amendment activities on the Fremont Street Mall in order to inform the  
16 citizenry of the goals of the Edwards campaign, One Corps, and other community based  
17 organizations whose activities he supports. Mr. DeVoe seeks access in order to engage in the  
18 First Amendment activities described by Mr. Peck and the ACLU above.  
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20  
21 18. Plaintiff the Unitarian Universalist Social Justice Committee [hereinafter UUSJC]  
22 is a non-profit organization involved in public education, organizing and political advocacy  
23 aimed at putting Unitarian Universalist principals to work in the community. In the past, the  
24 UUSJC has hosted town hall meetings for school board candidates, affiliated with the  
25 Progressive Leadership Alliance of Nevada (a statewide coalition that monitors the Nevada  
26 Legislature), supported organizations that assist people with HIV/AIDS, and attended labor,  
27 environmental, civil rights and low-income rallies. It carries out its activities by distributing  
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1 educational literature, gathering signatures on petitions addressed to public officials, and other  
2 activities directed to generating public discussion and awareness of the Unitarian Universalist's  
3 mission. The UUSJC seeks and accepts street donations in order to pay for materials and the  
4 expenses associated with spreading its political messages. Message bearing merchandise, such  
5 as buttons, T-shirts, etc., are sometimes given away in return for a contribution. The  
6 organization also relies on tables and displays to facilitate their First Amendment activities. The  
7 UUSJC seeks to engage in the foregoing activities on the Fremont Street Mall.

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10 19. Plaintiff the Sin City Chamber of Commerce of Las Vegas is the United States'  
11 only non-discriminatory chamber of commerce. The Sin City Chamber of Commerce is a  
12 member-based business organization that welcomes all legal businesses as active members to be  
13 treated with dignity, equality, and respect. The Sin City Chamber of Commerce proactively  
14 promotes their members' interests, products and services. As part of its daily business, the  
15 Chamber receives many calls from its Individual Members requesting information and advice  
16 about public places where they can legally advertise and perform outreach. The Sin City  
17 Chamber of Commerce also receives phone calls and email from all over the world from visitors  
18 that are requesting information about starting adult entertainment entities in Las Vegas and the  
19 proper public places in which they can legally advertise. A significant percentage of the  
20 Chamber's over 500 individual members, about 20% , are "adult" businesses that would be  
21 included under the definition of a "sexually oriented business" under LVMC 19.04.010, as  
22 prohibited from being on Fremont Street by LVMC 11.68A(G). The Sin City Chamber of  
23 Commerce and its members wish to continue to engage in outreach, advertising, and protected  
24 speech on the Fremont Street pedestrian mall. The Sin City Chamber of Commerce seeks to  
25 protect all of its members' rights to engage in fair trade, protected speech, advertisement, and  
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1 expression on the Fremont Street Mall.

2           20.     The Shundahai Network is a community-based Nevada non-profit organization  
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4 involved in public education, organizing and political advocacy aimed at halting the nuclear arms  
5 race and encouraging nuclear disarmament. It carries out its activities by distributing educational  
6 literature, gathering signatures on petitions addressed to public officials, staging rallies, and  
7 holding public meetings and other activities directed to generating public discussion and activity  
8 on behalf of nuclear arms control. In order to defray the cost of its political activities it seeks and  
9 accepts street donations. Message-bearing merchandise, such as buttons, bumper-stickers, and T-  
10 shirt are sometimes given away in return for a contribution in order to raise additional funds. The  
11 Shundahai Network has sought permission from the FSLLC to participate in these activities on  
12 the Fremont Street Experience, but permission has been withheld. The nature of their activities  
13 is equally covered both by the original ordinances at issue in this case, and the renewed ordinances  
14 10.44A and 11.68A.  
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17 **B.     Defendants**

18           21.     Defendant the City of Las Vegas is a municipal corporation chartered under the  
19 laws of the State of Nevada. Defendant Oscar Goodman, in his official capacity as the Mayor of  
20 the City of Las Vegas, is the city official responsible for the enforcement of the City's ordinances,  
21 including the Pedestrian Mall Act. Under the Act, the City has contracted with the FSELLC to  
22 operate a downtown section of Las Vegas as a public park and vested it with the authority to  
23 establish regulatory policies governing access to and activities within the Fremont Street Mall.  
24 By exercise of the police powers vested in Mayor Goodman, the limitations placed on First  
25 Amendment activities by the FSELLC are enforced through the City's criminal ordinances.  
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1           22. Defendant Joseph Schillaci, in his official capacity as the president of the  
2 FSELLC, is the individual responsible for implementing and carrying out the policies of that  
3 entity. In his capacity as president, he is vested by the City with regulatory authority pertaining  
4 to the operation of the FSELLC, as well as the authority to enforce those rules. He is vested with  
5 the power to remove and/or detain for arrest individuals who fail to abide by the rules established  
6 by the FSELLC. The FSELLC has its own security force for this purpose.

8           23. Defendant the FSELLC is a statutorily created private operating company charged  
9 with the responsibility of acquiring, constructing, improving, operating, managing, and  
10 maintaining the Fremont Street Mall established by Las Vegas Municipal Code Ch. 11.68.  
11 Through its president Joseph Schillaci, and by the power vested in it by the City of Las Vegas,  
12 the FSELLC has enforced restrictions on Plaintiffs' First Amendment activities.

#### 14       **IV. FACTUAL ALLEGATIONS**

15           24. In 1994, the City of Las Vegas contracted with the FSELLC to transform Fremont  
16 Street into the Fremont Street Experience. Five blocks of Fremont Street, the center of the  
17 downtown area, and certain adjoining blocks, were closed off to automotive traffic. The street  
18 was decoratively repaved as one large promenade, and a canopy capable of generating a light  
19 show (known, with a dash of hyperbole, as the "celestial superstructure") was installed over  
20 certain parts of the street. In the evening, the light show plays overhead for a few minutes each  
21 hour. Although Fremont Street itself is partially covered by the canopy, it remains open to the  
22 elements from above and all sides. None of the other adjoining block of the Fremont Street  
23 Experience are covered by the light show.

24           25. Prior to the Fremont Street Experience's transformation into a pedestrian mall, the  
25 area was an undisputed public forum. Plaintiffs are aware of no municipal ordinances that were  
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1 in place prior to the opening of Fremont Street in 1995 that completely prohibited the distribution  
2 of literature or the solicitation of charitable contributions on the old Fremont Street, or any other  
3 downtown street. Similarly, Plaintiffs are not aware of any preexisting restrictions on lawful  
4 assembly and the other First Amendment activities at issue in this case that were specific to  
5 Fremont Street.  
6

7         26. Despite its expensive make over and the added attractions, Fremont Street's  
8 objective attributes as a major downtown street have not changed. For this reason, Fremont  
9 Street is the quintessential public forum. *See American Civil Liberties Union of Nevada v. City*  
10 *of Las Vegas*, 333 F.3d 1092 (9th Cir. 2003). The street mall is open to unrestricted pedestrian  
11 use and is part of the downtown transportation grid. Historic Fremont Street lies at the center of  
12 the mall and is the main axis, intersecting five city blocks. The perimeter streets and sidewalks  
13 are continuous with and adjacent to downtown's other streets and sidewalks. A visitor to this  
14 area would not walk around the mall to travel to the other side, but would walk through the mall  
15 either on Fremont Street itself or on one of the streets that intersect it.  
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18         27. Although cars are no longer permitted to drive down the length of Fremont Street  
19 itself, the enabling legislation and the agreement between FSELLC and the City requires that a  
20 route for pedestrians remain open at all times, limiting FSELLC's discretion to manipulate the  
21 landscape or otherwise obstruct pedestrian use. Additionally, automotive traffic is permitted to  
22 cross the Fremont Street Mall in two places, and pedestrians cross at each intersection. The  
23 street is seamlessly incorporated into the City's downtown transportation grid and continues to  
24 anchor the central business and gaming district. The addition of entertainment to the Fremont  
25 Street Mall's uses did not alter the fact that it remains a public thoroughfare and one of the City's  
26 two premiere gaming and commercial districts.  
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1           28.     Fremont Street Mall is still a street as defined by the enabling legislation. City  
2 and state codes define pedestrian malls generally, and the Fremont Street Mall specifically, as  
3 streets and sidewalks. The same major hotels, casinos and many of the same retail  
4 establishments, such as McDonalds, still line the sides of Fremont Street just as they did before  
5 the renovation. Fremont Street is still located squarely in the middle of downtown, and  
6 pedestrians use it for the same purposes as they did previously. The Fremont Street Mall remains  
7 open to the elements despite the canopy and light show. Both before and after its transformation,  
8 Fremont Street remains a commercial district and public thoroughfare. The grime of Fremont  
9 Street has been scrubbed away and it has been dramatically redesigned in a way that the  
10 traditional curb and gutter sidewalks fit seamlessly into the street, but its character as a  
11 commercial street remains.  
12

14           29.     Because of its size, location, and its role and function as the center of downtown,  
15 the Fremont Street Mall is the modern version of the old "Town Square" or "Main Street." The  
16 streets and sidewalks that anchor the Mall are public property and constitute a traditional public  
17 forum for expressive activity. The FSELLC sponsors many educational, cultural and social  
18 events which attract thousands of voters and citizens daily. The Fremont Street Mall is one of  
19 the largest gathering places in Nevada and Clark County of voters and residents. While many of  
20 the visitors are tourists, many others are county and state residents. It is very likely the largest  
21 gathering place in the entire state and is one of the places where the Plaintiffs and their associates  
22 could reach the largest number of citizens with their viewpoints and messages.  
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25           30.     The Defendants have tried to change the status of Fremont Street as a public  
26 forum and to limit the public's right to engage in First Amendment activity. The City adopted a  
27 number of ordinances explicitly prohibiting discrete First Amendment activities, including the  
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1 presence of sexually-oriented businesses, unapproved advertising, unapproved use of tables for  
2 purposes of solicitation, and solicitation of any type.

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4 31. All solicitation on the entire Fremont Street Experience is prohibited by LVMC  
5 11.68A(K), as defined in LVMC 10.44A. "Solicitation" for purposes of Chapter 10.44A, means  
6 "asking, begging, soliciting or pleading, for the purpose of immediately obtaining money, charity,  
7 business or patronage, or gifts or items of value for oneself or another person or organization."  
8 For non-profit organizations in particular, the mere gathering of signatures for future contact, or  
9 the signing of a petition, may be the "business" or "patronage" that the non-profit is seeking.  
10 LVMC 10.44A does not limit itself to commercial or monetary activity. This chills and infringes  
11 on the speech of non-profit Plaintiffs and others, particularly ACLU, UUSJC, and Richard  
12 DeVoe.  
13

14  
15 32. The statute covers written material soliciting immediate paid membership in an  
16 organization or advertising information about the availability and cost of obtaining the  
17 organization's publications. Violation of the ordinance is punishable as a misdemeanor. By its  
18 terms, the ordinance draws a content-based distinction based on the solicitation aspect of the  
19 communication. Additionally, the ordinance creates a content-based exception for all  
20 commercial activity "authorized by The Fremont Street Experience Limited Liability Company"  
21 (LVMC 11.68A.100(B)).  
22

23 33. The ordinance is not limited to panhandling or commercial handbills. The  
24 ordinance prohibits all oral and written requests for immediate donations. The ordinance  
25 prevents Plaintiffs from distributing any literature that contains a request for funds, "patronage,"  
26 or anything of value. The ban extends to all requests for immediate patronage or charity, not just  
27 in-hand requests for immediate cash. Plaintiffs UUSJC and the Shundahai Network request and  
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1 accept donations in the form of money or donated articles in order to support their charity work.  
2 Similarly, Plaintiff ACLU of Nevada seeks to solicit membership and donations. Plaintiff Rick  
3 DeVoe was threatened with enforcement of LVMC 11.68A after passing out “pledge sheets”  
4 asking individuals to make an immediate promise of individual environmental action. This  
5 immediate promise could certainly fall within the prohibition of all immediate “patronage.”  
6 Plaintiff Sin City Chamber of Commerce seeks to protect its members’ ability to increase their  
7 business profiles by advertising services, which may include requests to immediately sign up for  
8 email contact lists, or business services. Both requests could be termed “business” or  
9 “patronage” prohibited under LVMC 11.68A(K). Plaintiffs believe that their protected outreach  
10 activity and requests for charity are protected speech in a public forum, and that LVMC  
11 11.68A(K) unconstitutionally restricts First Amendment speech. Plaintiffs challenge the  
12 solicitation ordinance both facially and as applied.

15           34.     LVMC § 11.68A.100(B) prohibits unauthorized street vending, advertising and  
16 entertainment. Although there are kiosks available for rent by authorized vendors, the prior  
17 version of this ordinance, LVMC 11.68.100(B), had been enforced to prohibit the street sale of  
18 t-shirts, buttons, bumper stickers, and other promotional materials or publications sold by grass  
19 roots organizations to distribute their messages and fund their activities. Plaintiffs maintain that  
20 the replacement language of 11.68A.100(B) fails to correct the constitutional flaws found by this  
21 Court. By its terms the ordinance prohibits groups like the ACLU or Sin City Chamber of  
22 Commerce and its members from distributing materials or using another medium to advertise  
23 their causes or to solicit membership or support, “unless conducted or authorized by the Fremont  
24 Street Limited Liability Company.” By its terms, the ordinance also prohibits street performers  
25 who might compete with the mall's entertainment.  
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1           35.     On January 27, 2007, Plaintiff Rick DeVoe used a small table to support  
2 pamphlets, news articles, and a sign-up sheet for One Corps, an environmental activism group.  
3 Two security guards from the Fremont Street, LLC, approached Mr. DeVoe and told him that his  
4 table was barred by the language of LVMC 11.68A. Attorneys from Plaintiff ACLU of Nevada  
5 were called by Mr. DeVoe to monitor this interaction. When they interceded and requested that  
6 the security officer offer authority for removing Mr. DeVoe from the mall, FSELLC officials  
7 handed the attorneys a copy of LVMC 11.68A, with the section against tabling “for purposes of  
8 solicitation”, LVMC 11.68A.100(H), highlighted.  
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10  
11           36.     LVMC § 11.68A.100(H) prohibits the placement of displays and tables “for  
12 purposes of solicitation” and has been used as justification for threatening to remove Plaintiff  
13 Rick DeVoe from the pedestrian mall while he used a table solely to hold pamphlets and sign-up  
14 sheets related to protected political speech. Tables and these other movable supports are often  
15 used in association with core expressive activities, such as gathering signatures, distributing  
16 informational leaflets, proselytizing, or selling message-bearing merchandise, which would fall  
17 under the definition of being “for the purposes of solicitation.” Tables facilitate First  
18 Amendment activity by enabling the display of multiple pamphlets or other items, as well as the  
19 distribution of a greater amount of material. The City cannot prohibit the use of these tables as  
20 relates to protected speech simply because the speaker also ‘solicits’ immediate charitable  
21 contributions, money, or patronage, as defined in LVMC 10.44A.010.  
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24           37.     The use of a table may convey a message by giving an organization the  
25 appearance of greater stability and resources than that projected by a lone, roaming individual  
26 distributing leaflets. The ordinance, by its terms, does not allow organizations like the ACLU or  
27 the members of the Sin City Chamber of Commerce to place tables or other supports on Fremont  
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1 Street to assist in charitable or commercial solicitation. The ordinance flatly prohibits the use of  
2 tables or displays by the Plaintiffs and other similarly situated, so long as one of their purposes is  
3 soliciting. This ordinance will still infringe on the expressive use of tabling, as struck down by  
4 this Court, and as already applied to Plaintiff Rick DeVoe.  
5

6 38. On at least one occasion, the ACLU Plaintiffs set up a table on Fremont Street  
7 from which several individuals were distributing literature. FSELLC security personnel  
8 intervened and ordered that the table be dismantled. On numerous other occasions, Plaintiffs'  
9 efforts to obtain prior approval from FSELLC officials to set up a table to aid in the distribution  
10 of literature have been denied or ignored. This Court held such restrictions on tabling as applied  
11 to expressive activity unconstitutional. During these incidents, Plaintiffs ACLU solicited  
12 business, donations, and membership, either immediately or in the future, and their actions would  
13 therefore still be prohibited by revised LVMC 11.68A (H).  
14

15 39. LVMC 11.68A.100(G) contains a new provision which prohibits "Sexually-  
16 Oriented businesses" from the pedestrian mall. This section is puzzling, as sexually-oriented  
17 businesses are already prohibited from locating in office space abutting the pedestrian mall by  
18 applicable zoning regulations found in LVMC 19.04. This prohibition is included in a list  
19 encompassing only actual activities, with the sole exception being for sexually-oriented  
20 businesses. Therefore, this section seems to prohibit advertising or activity by sexually-oriented  
21 businesses on the pedestrian mall. This is a content-based and violative of the First Amendment,  
22 as it may well prohibit protected speech whenever the speaker is associated with or employed by  
23 a sexually-oriented business. Plaintiff Sin City Chamber of Commerce has many members  
24 businesses who qualify as "sexually-oriented" under LVMC 19.04.010, and seeks to affirm its  
25 members rights to engage in protected speech on the Fremont Street Experience.  
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1           40.     The restrictions Plaintiffs originally challenged contain explicit content or  
2 speaker-based distinctions. None of the restrictions contained in LVMC §§ 11.68.100(B), (H),  
3 and (I) applied to activities that were “arguably protected” by the National Labor Relations Act.  
4 (LVMC 11.68.100(K)). The Ninth Circuit held that extending special rights to organized labor  
5 created an impermissibly content-based restriction on speech. While those content-based  
6 distinctions no longer appear in the plain language of the ordinances, the Las Vegas City  
7 Attorney stated on the legislative record for the adoption of 11.68A, that organized labor still  
8 retained “additional rights...under the national Labor Relations Act,” that were “protected well  
9 and above the constitution” and “not impacted by [11.68A or 10.44A].” As such, Plaintiffs  
10 contend that 11.68A and 10.44A are still content-based, as the city has stated for the record its  
11 intent to apply the restrictions on speech differently to organized labor groups.  
12

14           41.     Additionally, the restrictions contained in LVMC § 11.68A.100(B) (street  
15 vending) and § 11.68A.100(H) (tables and displays) only apply to outside groups like the  
16 Plaintiffs. Organizations or other entities that are affiliated with the FSELLC or who have  
17 obtained the approval of FSELLC officials are not subject to the restrictions. These activities,  
18 including parades, are not restricted if conducted in connection with a special event or mall  
19 entertainment or otherwise authorized by FSELLC officials.  
20

21           42.     There are no limits on the discretion of FSELLC officials. The Plaintiffs have  
22 been repeatedly denied access to Fremont Street to engage in activities covered by LVMC  
23 11.68A.100. The ACLU’s past tabling event, the basis for the Ninth Circuit’s holding in its most  
24 recent decision in this case, 466 F.3d 784 (9<sup>th</sup> Cir. 2007), would still be banned under the current  
25 version of 11.68A. Plaintiff DeVoe has also been threatened under the new ordinance with  
26 removal on one occasion where he set up a table for expressive purposes.  
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1           43.     Plaintiffs challenge the restrictions that are set forth in LVMC § 11.68A.100 both  
2 as applied and facially. The restrictions directly target First Amendment activity or conduct  
3 commonly associated with First Amendment activity.  
4

5           44.     The restrictions on First Amendment activity contained in LVMC §§ 10.44A and  
6 11.68A.100 are not reasonable time, place, and manner regulations. They draw content and  
7 speaker-based distinctions and are not narrowly tailored to further legitimate governmental  
8 interests. The establishment of a "no-speech zone" on the busiest street in the heart of downtown  
9 does not leave Plaintiffs with ample alternatives of communication.  
10

11           45.     Plaintiffs maintain that the replacement of LVMC 10.44 and 11.68 with 10.44A  
12 and 11.68A fails to cure the constitutional defects found by this Court and the Ninth Circuit.  
13

#### 14     **V. CLAIMS FOR RELIEF**

##### 15                     **First Cause of Action**

##### 16                     **Violation of Rights Protected by the First and Fourteenth** 17                     **Amendments to the United States Constitution: 42 U.S.C. § 1983**

18           46.     Plaintiffs reallege and incorporate by reference herein the allegations continued in  
19 paragraphs 1 through 45.  
20

21           47.     Defendants, under color of state law, have caused and will cause Plaintiffs to be  
22 subjected to the deprivation of their constitutionally protected rights in violation of 42 U.S.C. §  
23 1983.  
24

25           48.     LVMC § 11.68A.100, subsections (B) ("Vending and Advertising"), (G)  
26 ("Sexually Oriented Businesses"), (H) ("Tables and Displays"), and (K) ("Solicitation"),  
27 unreasonably prohibit First Amendment activity or conduct commonly associated with First  
28



1 Amendment activity. The restrictions violate the First Amendment of the United States  
 2 Constitution as written and as enforced. As such, these code provisions are unconstitutional both  
 3 facially and as applied. In addition, to the extent the Defendants allow some groups to engage in  
 4 speech on Fremont Street and not others, the Defendants' actions violate the First Amendment.  
 5

6 49. To the extent the FSELLC permits any of the activities Plaintiffs seek to engage in  
 7 on a request or discretionary basis, there are no standards governing the discretion of those  
 8 making such determinations under color of state law. This practice violates Plaintiffs' and others'  
 9 rights under the First and Fourteenth Amendments to the United States Constitution.  
 10

11 **Second Cause of Action**  
 12 **Violation of the Equal Protection Clause of the Fourteenth**  
 13 **Amendment to the United States Constitution**

14 50. Plaintiffs repeat and incorporate by reference the allegations contained in  
 15 paragraphs 1 through 49.  
 16

17 51. LVMC § 11.68A.100, subsections (B) ("Vending and Advertising"), (H) ("Tables  
 18 and Displays"), and (K) ("Solicitation") violate Plaintiffs' and others' rights to equal protection of  
 19 the laws by carving out an explicit exception for all speech sponsored or approved by the  
 20 FSELLC. In addition, City of Las Vegas' on-the-record comments show that these ordinances  
 21 will still be enforced in a discriminatory manner in favor of labor organizations and speech. To  
 22 the extent that the ordinance does not apply equally to FSELLC sponsored or approved speech,  
 23 these code provisions violate the rights of Plaintiffs and others under the Equal Protection Clause  
 24 of the Fourteenth Amendment to the United States Constitution. In addition, to the extent the  
 25 Defendants allow some groups to organize protests on Fremont Street and not others, the  
 26 Defendants' actions violate the Equal Protection Clause.  
 27  
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53. WHEREFORE, Plaintiffs seek judgment as follows:

(b). A preliminary and permanent injunction, enjoining the Defendants from enforcing the above challenged provisions of the Las Vegas Municipal Code based upon their being constitutionally invalid, both facially and as applied;

(c). A preliminary and permanent injunction enjoining the Defendants from interfering with the Plaintiffs' right to lawfully assemble, protest and other constitutionally-protected expression and activity at the Fremont Street Experience;

(d). An award of attorney fees and expenses under 42 U.S.C. § 1988;

(e). Such other relief as the court deems just or proper.

Dated this 25st day of April 2007.

Respectfully submitted by:

\_\_\_\_\_/s/\_\_\_\_\_  
Allen Lichtenstein

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of April 2007, I caused to be deposited for mailing postage prepaid, at Las Vegas, Nevada, a copy of the foregoing Plaintiffs' Amended Complaint, addressed to the following:

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\_\_\_\_\_/s/\_\_\_\_\_  
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